



SECRETARY OF STATE
STATE OF INDIANA
SECURITIES DIVISION

Todd Rokita
Secretary of State

O. Wayne Davis
Securities Commissioner

June 7, 2007

RE: Indiana House Enrolled Act 1717

Dear Loan Broker:

Indiana House Enrolled Act 1717 was signed by the Governor on May 11, 2007 and takes effect on July 1, 2007. HEA 1717 makes numerous changes to the Indiana Loan Broker Act ("Act") (Ind. Code 23-2-5) affecting the licensing requirements for loan brokers, registration requirements for originators, prohibitions against certain conduct, and enforcement of the Act. You may access a copy of the bill from the Indiana General Assembly's website: <http://www.in.gov/legislative/bills/2007/HE/HE1717.1.html>.

With respect to those loan brokers and originators licensed and registered with Indiana Secretary of State, Securities Division ("Division") prior to July 1, 2007, the amendments will be phased-in. The following explanation summarizes certain effects of the Revised Act on currently licensed loan brokers and registered originators. This summary, however, does not cover all provisions of the Revised Act and you should consult with your private attorney with respect to how these changes may apply to your specific situation.

Licensing & Registration

Loan brokers and originators that are licensed or registered with the Division prior to July 1, 2007 will be required to apply for renewal on the new application form. Registered originators that desire to transfer their registration after June 30, 2007 must utilize the new application form. This, and other revised forms will be available on our website on June, 30, 2007. The new fee, testing, and criminal background check requirements however, will not be applicable until January 1, 2008 for currently licensed loan brokers and registered originators.

Any individual that was not registered with the Division prior to June 30, 2007, that desires to become employed by a licensed loan broker to engage in origination activities, will be required to apply for registration on the new application form, submit an application fee of \$100, successfully complete 24-hours of live instruction in approved courses, pass the required examination, and undergo a criminal background check before a certificate of registration may be issued.

The registration provisions of the Revised Loan Broker Act will apply to existing licensed loan brokers and registered originators beginning January 1, 2008. Loan brokers renewing their license thereafter will be required to submit an application fee of \$400, plus \$200 for each of the loan broker's ultimate equitable owners, and have each ultimate equitable owner undergo a

criminal background check before the license may be renewed. Originators renewing after January 1, 2008, will be required to submit with their application an application fee of \$100 for registration as an originator, pass the required examination, demonstrate compliance with the continuing education requirement of six (6) hours per year, and undergo a criminal background check.

Be advised: Loan brokers and originators, whose licenses and registrations expire in 2007 are required to renew by December 1, 2007 pursuant to Ind. Code § 23-2-5-6. If not timely renewed, the license or registration will expire on December 31, 2007. To receive a new license or registration, the loan broker or originator will be required to comply with the new fee, testing, and criminal background check requirements.

New Compliance Requirements

In addition to the enhanced licensing and registration requirements, the Revised Act also contains many other provisions. Beginning on July 1, 2007 all licensed loan brokers must include the following statement on **every** contract for services of a loan broker.

“No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing.”

Additionally, any document that is delivered or required to be delivered to a borrower or prospective borrower must contain the loan broker license number and registration number of each principal manager or originator that has contact with the file. (**Note:** Originators registered before July 1, 2007 will not have registration numbers, only those individuals applying for initial registration after June 30, 2007 will be issued a registration number. Registered originators will receive a registration number upon their next renewal or transfer.)

Loan brokers or registered originators that are in possession of funds which belong to others, including a prospective borrower, must at the request of such person account for the funds, follow any reasonable and lawful instructions set by the person, and return any unspent funds in a timely manner.

Furthermore, the Revised Act addresses a licensee or registrant's interaction and affiliation with a real estate appraisal company. The Act makes it a violation of the Loan Broker Act to knowingly bribe, coerce, or intimidate another person to corrupt by or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as a security for a mortgage loan. Additionally it prohibits a licensee or registrant, (and members of their immediate family) from owning or controlling the majority interest in an appraisal company, unless the affiliation existed prior to June 30, 2007, in which case the person's level of ownership or control shall not increase, nor shall the interest be transferred to a member of the person's immediate family. If the Commissioner determines that a violation of the Act has occurred, the Commissioner may order one or more persons to divest their interest in the appraisal company.

Enforcement

The Revised Act gives the Commissioner the authority to deny, suspend, or revoke a license or a certificate of registration or impose a civil penalty if the loan broker or principal manager fails to

reasonably supervise the loan broker's originators or employees to ensure compliance with the Act. In addition, a license or a certificate of registration may be denied, suspended, or revoked, if a loan broker or originator is found by the Commissioner to have engaged in dishonest or unethical practices in the loan brokerage business. A licensed loan broker, an officer, a director, or an ultimate equitable owner of a loan broker, or a registered originator that is determined to have violated the Act by the Commissioner may also be censured or permanently barred from becoming licensed, registered, or employed by a licensee.

A comprehensive summary highlighting the many provisions of HEA 1717 will may be downloaded from the Division's website www.sos.in.gov/securities.

If you have general questions regarding the revisions to the Indiana Loan Broker Act, you may contact David Maxwell, Loan Broker Examiner by email at drmaxwell@sos.in.gov or by telephone at 317.232.6681. You may also wish to consult with your own attorney as the Division is not authorized to give private legal advice.

Sincerely,



O. Wayne Davis
Securities Commissioner

OWD/dm